

IN THE
SUPREME COURT OF INDIANA

CASE NUMBER:

**ORDER AMENDING RULES OF ALTERNATIVE DISPUTE
RESOLUTION**

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 1.9, 1.11, 2.5, 3.4, 6.1, 6.2, and 6.4 of the Indiana Rules of Alternative Dispute Resolution is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

Rules for Alternative Dispute Resolution

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Rule 1.9. Service of Papers and Orders

The parties shall comply with Trial Rule 5 of the Rules of Trial Procedure in serving papers and other pleadings on parties during the course of the alternative dispute resolution process. The Clerk of the Circuit Court shall serve all orders, notices, and rulings under the procedure set forth in Trial Rule 72(~~and D~~).

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Rule 1.11. Alternative Dispute Resolution Plans.

A county desiring to participate in an alternative dispute resolution program pursuant to IC ~~33-14-13~~ 33-23-6 must develop and submit a plan to the Indiana Judicial Conference, and receive approval of said plan from the Executive Director of the Indiana Supreme Court Division of State Court Administration.

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Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

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(3) To register as a civil mediator, a person must meet all the requirements of this rule and must ~~complete~~ have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

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(B) Domestic Relations Cases: Educational Qualifications.

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(3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least ~~completed~~ forty (40) hours of Commission approved domestic relations mediation training in the three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

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(E) Accreditation Policies and Procedures for CME.

(1) *Approval of courses.* The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. ~~In the case of law school classes, in addition to the standard set forth herein, the class must be a regularly conducted class at a law school approved by the American Bar Association.~~ In determining if a course, including law school classes, meets this standard the Commission shall consider whether:

- (a) the course has substantial content dealing with alternative dispute resolution process;
- (b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;
- (c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;
- (d) the course teaches ethical issues associated with the practice of alternative dispute resolution;

(e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;

(f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace, business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental-, and,

(g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

(a) legislative, lobbying or other law-making activities.

(b) in-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.

(c) programs delivered by these methods: satellite, microwave, video, computer, internet, telephone or other electronic methods. To be approved courses must provide a discussion leader or two-way communication, classroom setting away from the mediator's offices, opportunity to ask questions, and must monitor attendance.

(d) courses or activities completed by self-study.

(e) programs directed to elementary, high school or college student level neutrals.

(3) *Procedures for Sponsors.* Any sponsor may apply to the Commission for approval of a course. The application must:

(i a) be submitted to the Commission at least thirty (30) days before the first date on which the course is to be offered;

(ii b) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/cle; and

(iii c) be accompanied by the written course outline and brochure used to furnish information about the course to mediators.

(4) *Procedure for Mediators.* A mediator may apply for credit of a live course either before or after the date on which it is offered. The application must:

(i a) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/cle;

(ii b) be accompanied by the written course outline and brochure used to furnish information about the course to mediators; and,

the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance.

(F) Procedure for Resolving Disputes. Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions pursuant to this Section shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

(G) Confidentiality. Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.

(H) Rules for Determining Education Completed.

(a) 1) Formula. The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:

- (i) a) Determining the total instruction time expressed in minutes;
- (ii) b) Dividing the total instruction time by sixty (60); and
- (iii) c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\text{Total Instruction time (in minutes)}}{\text{Sixty (60)}} = \text{Hours completed (rounded up the nearest 1/10) [FN*]}$$

(b) 2) Instruction Time Defined. Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

- (i) a) Introductory remarks;
- (ii) b) Breaks; or
- (iii) c) Business meetings

(3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:

(a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.

(b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.

(c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.

(d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).

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Rule 3.4. Arbitration Procedure

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(B) Submission of Materials. Unless otherwise agreed, all documents the parties desire to be considered in the arbitration process shall be filed with the arbitrator or Chair and exchanged among all attorneys of record no later than fifteen (15) days prior to any hearing relating to the matters set forth in the submission. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. In the event of binding arbitration, any party may object to the admissibility of these documentary matters under traditional rules of evidence; however, the parties are encouraged to waive such objections and, unless objection is filed at least five (5) days prior to hearing, objections shall be deemed waived. In addition, no later than five (5) days prior to hearing, each party may file with the arbitrator or Chair a pre-arbitration brief setting forth factual and legal positions as to the issues being arbitrated; if filed, pre-arbitration briefs shall be served upon the opposing party or parties. The parties may in their Arbitration Agreement alter the filing deadlines. They are encouraged to use the provisions of Indiana's Arbitration Act (~~IC 34-4-1-1~~ 34-57-1-1 et seq.) and the Uniform Arbitration Act (~~IC 34-4-2-1~~ 34-57-2-1 et seq.) to the extent possible and appropriate under the circumstances.

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Rule 6.1. Case Selection

Pursuant to ~~IC 33-13-15-3(e)~~ 33-38-10-3(c), upon the filing of a written joint petition and the written consent of a registered private judge, a civil case founded on contract, tort, or a combination of contract and tort shall be assigned to a private judge for disposition.

Rule 6.2. Compensation of Private Judge and County

As required by IC ~~33-13-15-8~~ 33-38-10-8, the parties shall be responsible for the compensation of the private judge, court personnel involved in the resolution of the dispute, and the costs of facilities and materials. At the time the petition for appointment of a private judge is filed, the parties shall file their written agreement as required by this provision.

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Rule 6.4. Place of Trial or Hearing

As provided by IC ~~33-13-15-7~~ 33-38-10-7, a trial or hearing in a case referred to a private judge may be conducted in any location agreeable to the parties, provided the location is posted in the Clerk's office at least three (3) days in advance of the hearing date.

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These amendments shall be effective January 1, 2005.

The Clerk of this Court is directed to forward a copy of this order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2004.

Randall T. Shepard
Chief Justice of Indiana

All Justices Concur.